

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

10.29.01 Hearing Procedures

Authority: Health Occupations Article, §§1–606, 7–205(a)(1) and (c), 7–316, and 7–604, Annotated Code of Maryland

Notice of Proposed Action

[15-396-P]

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulation .01, adopt new Regulations .01 and .10, and recodify existing Regulations .10—,12 to be Regulations .11—.13 under **COMAR 10.29.01 Hearing Procedures**. This action was considered at a public meeting on September 9, 2015, notice of which was given on the Board’s website at <http://dhmh.maryland.gov/bom/SitePages/Home.aspx> pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish sanctioning guidelines for the Board to use when imposing discipline on a respondent for violating the Maryland Morticians and Funeral Directors Act or COMAR 10.29.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499 (TTY 800-735-2258), or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through January 11, 2016. A public hearing has not been scheduled.

.01 Scope.

A. This chapter governs procedures for disciplinary matters and hearings before the Maryland State Board of Morticians and Funeral Directors and establishes the standards for use as a guide for the imposition of disciplinary sanctions against any of the following under jurisdiction of the Board:

(1) A licensed mortician, funeral director, apprentice, surviving spouse, funeral establishment, corporation, crematory supervisor, or executor;

(2) A courtesy card holder;

(3) A holder of a permit to operate a crematory;

(4) A certified crematory operator or crematory technician;

(5) A holder of a mortuary transport permit; and

(6) A registered transporter.

B. If, after a hearing, the Board finds that there are grounds under Health Occupations Article, §7–316 or 7–604, Annotated Code of Maryland, to sanction any person listed in §A of this regulation by way of probation, reprimand, suspension, fine, or revocation, the Board may consider aggravating and mitigating factors in determining sanctions.

.10 Sanctioning Guidelines.

A. General Application.

(1) This regulation shall be used by the Board as a guide for sanctioning pursuant to the Board's authority under Health Occupations Article, §§7–205, 7–316, and 7–604, Annotated Code of Maryland, for violations of the Morticians and Funeral Directors Act and the Board's regulations.

(2) The Board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the sanctioning guidelines.

(3) A departure from the sanctioning guidelines alone is not a ground for any hearing or appeal of a Board action.

(4) Notwithstanding these sanctioning guidelines, in order to resolve a disciplinary matter, the Board and the offending person may agree to surrender a license, courtesy card, permit, or certificate, or agree to a consent order with terms, conditions, and sanctions agreed upon.

(5) In a case where there are multiple and distinct violations, the Board may impose a sanction greater than the maximum indicated by the sanctioning guidelines for each individual violation.

(6) If probation is imposed, the Board may impose appropriate terms and conditions of probation. Violations of the terms or conditions may cause the Board to take further disciplinary action.

(7) In the event a violation does not fall within the sanction range, the Board shall so indicate and use its best judgment to determine the appropriate sanction and consider, to the extent possible, the factors in the sanctioning guidelines.

B. Range of Sanctions.

VIOLATION	MINIMUM SANCTION	MAXIMUM SANCTION	MINIMUM PENALTY	MAXIMUM PENALTY
(1) Fraudulently or deceptively obtains or attempts to obtain a license, permit, or registration for the applicant or licensee, permit holder, or registration holder or for another	Reprimand	Revocation/denial	\$0	\$5,000
(2) Fraudulently or deceptively uses a license, permit, or registration	Active suspension for 1 year	Revocation	\$0	\$5,000
(3) Commits fraud or misrepresentation: (a) In the practice of mortuary science; or (b) While removing or transporting human remains	Active suspension for 1 year	Revocation	\$0	\$5,000
(4) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude	Probation for 1 year	Revocation/denial	\$0	\$5,000
(5) Aids or abets an unauthorized person in the practice of mortuary science specifically: (a) In embalming without a license; (b) In making arrangements; (c) In the cremation of human remains; or (d) In the transporting or removal of human remains	Active suspension for 90 days	Revocation	\$0	\$5,000
(6) Advertises falsely or in a misleading manner	Reprimand	Active suspension for 60 days	\$0	\$500
(7) Solicits mortuary science business: (a) Either personally or by an agent, from a dying individual; or (b) To remove or transport human remains	Active suspension for 30 days	Active suspension for 1 year	\$0	\$1,500
(8) Directly or indirectly pays or offers to pay to obtain: (a) Mortuary science business; or	Active suspension for 30 days	Active suspension for 1 year	\$0	\$1,500

<i>(b) Business to remove or transport human remains</i>				
<i>(9) Solicits or accepts any payment or rebate for recommending any crematory, mausoleum, or cemetery or causing a dead human body to be disposed of there</i>	<i>Reprimand</i>	<i>Active suspension for 30 days</i>	<i>\$0</i>	<i>\$500</i>
<i>(10) Refuses to surrender custody of a human remains on the demand of a person who is entitled to its custody</i>	<i>Active suspension for 30 days</i>	<i>Revocation</i>	<i>\$2,500</i>	<i>\$5,000</i>
<i>(11) Sells or offers to sell any share, certificate, or interest, with a promise to offer to perform services to the buyer at a cost less than that offered to the general public, in:</i> <i>(a) A mortuary science business; or</i> <i>(b) A mortuary transport service</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$2,500</i>
<i>(12) Fails, after proper demand, to refund promptly any payments received under a pre-need contract with interest</i>	<i>Active suspension for 30 days</i>	<i>Revocation</i>	<i>\$1,000</i>	<i>\$5,000</i>
<i>(13) At the time funeral arrangements are made, fails to give the contract required by Health Occupations Article, §7-404, Annotated Code of Maryland</i>	<i>Reprimand</i>	<i>Active suspension 15 days</i>	<i>\$0</i>	<i>\$250</i>
<i>(14) Violates any State, municipal, or county law, rule, or regulation on the handling, custody, care, or transportation of human remains or the disposal of instruments, materials, and wastes relevant to preparation of human remains for final disposition</i>	<i>Reprimand</i>	<i>Active suspension for 1 year</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(15) Does one of the following:</i> <i>(a) Practices mortuary science under a name other than the name that appears on the license of that person or the name of a partnership in accordance with Health Occupations Article, §7-401, Annotated Code of Maryland; or</i> <i>(b) Removes and transports human remains under a name other than the name that appears on the permit or registration of that person</i>	<i>Reprimand</i>	<i>Probation</i>	<i>\$0</i>	<i>\$500</i>
<i>(16) Violates any provision of this title, of the laws relating to cremation, or any other law relating to removing and transporting of human remains</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(17) Is disciplined by a licensing or disciplinary authority of any other state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(18) Willfully makes or files a false report or record:</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>

<i>(a) In the practice of mortuary science; or (b) For a mortuary transport service</i>				
<i>(19) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(20) Submits a false statement to collect a fee</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(21) Provides professional services while under the influence of alcohol or using any narcotic or controlled dangerous substance, or other drug that is in excess of therapeutic amounts or without valid medical indication</i>	<i>Probation</i>	<i>Revocation</i>	<i>\$250</i>	<i>\$5,000</i>
<i>(22) Violates any rule, or regulation adopted by the Board</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(23) Is professionally, physically, or mentally incompetent</i>	<i>Active suspension for 30 days</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(24) Commits an act of unprofessional conduct: (a) In the practice of mortuary science; or (b) While removing and transporting human remains</i>	<i>Probation</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(25) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed, permitted, or registered and qualified to render because the individual is HIV positive;</i>	<i>Probation</i>	<i>Active suspension for 30 days</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(26) Except in an emergency life-threatening situation where is not feasible or practicable, fails to comply with CDC guidelines on universal precautions</i>	<i>Reprimand</i>	<i>Active suspension for 30 days</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(27) Fails to allow an inspection under Health Occupations Article, §7-205, Annotated Code of Maryland</i>	<i>Probation</i>	<i>Active suspension for 30 days</i>	<i>\$0</i>	<i>\$2,500</i>
<i>(28) Fails to comply with inspection requirements in the time specified by the Board</i>	<i>Reprimand</i>	<i>Probation</i>	<i>\$0</i>	<i>\$500</i>
<i>(29) Fails to comply with laws or regulations relating to Health-General Article, §5-513, Annotated Code of Maryland</i>	<i>Probation</i>	<i>Active suspension for 30 days</i>	<i>\$250</i>	<i>\$5,000</i>
<i>(30) Removes human remains from a death scene, mortuary transport services, funeral establishment, or crematory, without the authorization of the entity in custody of the human remains</i>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$250</i>	<i>\$5,000</i>

C. Mitigating and Aggravating Factors. Depending on the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following mitigating and aggravating factors in determining whether the sanction in a particular

case should fall outside of the range of sanctions established by the guidelines. These factors may include, but are not limited to the following:

(1) Mitigating Factors:

- (a) Absence of a prior disciplinary record;*
- (b) The respondent reported the violation to the Board;*
- (c) The respondent voluntarily admitted violation, provided full disclosure to the Board, and cooperated during Board proceedings;*
- (d) The respondent implemented remedial measures to correct or mitigate harm arising from the violation;*
- (e) The respondent made a timely good-faith effort to make restitution or otherwise rectify the consequences of the violation;*
- (f) Evidence of rehabilitation or potential for rehabilitation;*
- (g) Absence of premeditation to commit the violation;*
- (h) Absence of potential harm to or adverse impact on the public or adverse impact on the public;*
- (i) Isolated incident and not likely to recur; and*
- (j) The respondent's prior community service and present value to the community.*

(2) Aggravating Factors:

- (a) Previous criminal or administrative disciplinary history;*
- (b) The violation was committed deliberately or with gross negligence or recklessness;*
- (c) The violation had the potential for, or caused, serious harm;*
- (d) The violation was part of a pattern of detrimental conduct;*
- (e) The respondent was motivated to perform the violation by the respondent's financial gain;*
- (f) The vulnerability of the bereaved;*
- (g) The respondent attempted to conceal the violation, falsified or destroyed evidence, or presented false testimony or evidence;*
- (h) The respondent failed to cooperate with the Board's investigation; and*
- (i) Previous attempts at rehabilitation were unsuccessful.*

VAN T. MITCHELL
Secretary of Health and Mental Hygiene